IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **11.06.2018**

CORAM

THE HONOURABLE MR. JUSTICE **V.BHARATHIDASAN**

C.S.No.349 of 2011
and
Tr.C.S.No.652 of 2017

C.S.No.349 of 2011

M/s. Consolidated Construction
Consortium Limited,
Rep. by its
Senior Deputy General Manager Finance,
Mr.G.Viswanathan,
No.5, 2nd Link Street,
C.I.T. Colony,
Mylapore, Chennai - 600 004 ... Plaintiff

Vs.

1. Indian bank,
   rep. by its Branch Manager,
   T.Nagar Branch,
   No.7, Prakasam Road,
   T.Nagar, Chennai - 600 017.

2. M/s. Indian Bank,
   Chief Manager,
   Asset Recovery Management Dept,
   Wellington Estate,
   No.55, Ethiraj Salai,
   Chennai - 600 008.

The Debt Recovery Officer,
Debts Recovery Tribunal II,
Spencer Towers,
Ethiraj Salai,
Chennai 600 008.
(3rd defendant is deleted as per the order of this Court dated 26.04.2011 made in C.S.D.No.25651/2010)

3. Pacific Leather Fashions,
Rep. by its Proprietor
Mr.N.Gajendranm,
No.9, Manikanda Mudali Street,
Chennai - 600 021.

4. Arul Mani,

5. Mr.S.Santha Marian,

6. Mr.M.R.Vincent,

7. Smt.Gnanam.

8. Smt.S.Pushmmal,

9. Mr. S.Dasan

10. Mr.S.Navamani

11. S.Anthoni Ammal

12. Mr. Amaladasna

13. Mr. A.Dennisan

14. Mrs. A.Rose Garmela

15. Devika Rani ... Defendants

Tr.C.S.No.652 of 2017

M/s. Consolidated Construction
Consortium Limited,
Rep. by its
Senior Deputy General Manager Finance,
Mr.G.Viswanathan,
No.5, 2nd Link Street,
C.I.T. Colony,
Mylapore, Chennai - 600 004 ... Plaintiff

/vs/

Indian Bank,
Chief Manager,
Asset Recovery Management Debt,
Wellington Estate,
No.55, Ethiraj Salai,
Chennai - 600 008 ... defendant

PRAYER in C.S.349 of 2011 : Plaint under Order IV Rule 1 of O.S.Rules read with Order VII Rule 1 of C.P.C as against the defendants praying (a) for a declaration that the entire proceedings initiated by the Bank commencing from C.S.No.1694 of 1994, on the file of Hon'ble High Court, Madras, which was subsequently transferred to the Hon'ble Debts Recovery Tribunal and renumbered as T.A.344 of 1997 and its order dated 03.09.1997 and the issuance of Debts Recovery Certificate in DRC No.160 of 2007 in T.A.No.344 of 1997 on the allegation that an equitable mortgage has been created by the fifth defendant in the capacity of Power of Attorney of defendants 6 to 15 in favour of Indian Bank as null and void and is not binding on the plaintiff (b) for a permanent injunction restraining the defendants 1 to 3, their servants, men and agents from proceeding further in any manner whatsoever pursuant to the order dated 03.09.1997 in T.A.No.344 of 1997, Hon'ble Debts Recovery Tribunal , Chennai, on the allegation that an equitable mortgage has been created by the fifth defendant in the capacity of Power of Attorney of defendants 6 to 15 in favour of first defendant Indian Bank, in respect of the plaintiff's property (c) to award the cost of the suit .

Prayer in Tr.C.S.No.652 of 2017 : Plaint filed in O.S.No.12870 of 2010 under Order VII Rule 1 of C.P.C. on the file of VII Additional City Civil Court, Chennai and on being transferred and numbered as Tr.C.S.No.652 of 2017 praying (a) to declare that the entire proceedings initiated by the defendant purported to be under Section 13(4) of the Securitisation and Reconstruction of financial Assets and Enforcement of Security Interest Act 2002 dated 27.07.2009 attempting to proceed against the plaintiff property as null and void (b) consequentially an order of permanent injunction restraining the defendant, their servants, agents, men working or claiming through them from in any way proceeding against the plaintiff's property in any manner whatsoever pursuant to the notice dated 27.07.009 under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 and (c) to award the cost of the suit.

For Plaintiff in both suits : Mr.S.S.Rajesh

For Defendants in both suits : Mr.K.P.Hemanthkumar,

for M/s. Aiyar & Dolia
for Indian Bank

JUDGMENT

The plaintiff filed a suit in O.S.No.719 of 2009 to declare the proceedings initiated by the Indian Bank under Section 13(4) of the Securitisation and Reconstruction of the Financial Assets and Enforcement of Security Interest Act,2002 dated 27.07.2009 as null and void and also consequential injunction restraining the defendant from proceeding against the plaintiff's property.

2. Pending suit, while deciding the interlocutory application for injunction, the plaintiff was directed to deposit a sum of Rs.1,20,00,000/-(Rupees One Crore and Twenty Lakhs only) to the credit of the suit and the amount has also been deposited by the plaintiff. Thereafter, on the ground of pecuniary jurisdiction, the said suit was transferred to City Civil Court, Chennai and renumbered as O.S.No.12870 of 2011.

3. In the meantime, the plaintiff filed a suit in C.S.No.349 of 2011 before this Court to declare the proceedings initiated by the Indian Bank in T.A.No.344 of 1997 dated 03.09.1997 and the issuance of Debts Recovery Certificate in DRC NO.160 of 2007 in T.A.No.344 of 1997 as null and void and is not binding on the plaintiff and also for permanent injunction restraining the defendants from proceeding further pursuant to the said order. Thereafter, as per the order passed by this Court in A.Nos.960 & 961 of 2012 in C.S.No.349 of 2011 dated 05.07.2017,the suit in O.S.No.12870 of 2011 on the file of the City Civil Court, Chennai, was re-transferred to this Court and re-numbered as Tr.C.S.No.652 of 2017 and ordered to be tried along with C.S.No.349 of 2011.

4. Now, pending the above suits, the parties have settled the dispute among themselves. Today, they have filed a joint memo of compromise signed by the plaintiff, defendant/Indian Bank and their respective counsels. The terms of the said joint compromise memo are recorded.

6. As per the compromise, the plaintiff has paid a sum of Rs.40,00,000/- (Rupees Forty Lakhs Only) by way of Demand Draft, which is handed over to the learned counsel appearing for the defendant/Indian Bank in Court today. The learned counsel for the plaintiff is permitted to withdraw the amount if any already deposited by them to the credit of C.S.No.719 of 2009.

7. In view of the joint memo of compromise entered into between the parties, both the suits are decreed in terms of the joint Memo of Compromise. The said joint compromise memo shall form part of the decree. Registry is directed to refund the Court fee if permissible under law to the plaintiff.

11.06.2018

mrp

Internet: yes/no
speaking order/non-speaking order

V.BHARATHIDASAN .J,

mrp

C.S.No.349 of 2011
and
Tr.C.S.No.652 of 2017

11.06.2018